

Date of Decision: 11th September 1995

SPECIAL CIVIL APPLICATION NO. 5664 of 1992

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri U.A. Trivedi, Advocate, for Shri R.R. Trivedi, Advocate,
for the Petitioner

Respondent No.1 served

Shri K.C. Shah, Asst. Govt. Pleader, for Respondent No. 2

CORAM: A.N. DIVECHA, J.
(Date: 11th September 1995)

ORAL JUDGMENT

The order passed by the District Development Officer of Junagadh (Respondent No.1 herein) on 3rd November 1990 as affirmed in revision by the order passed by the Principal Secretary (Appeal), Revenue Department at Ahmedabad, on 10th January 1992 is under challenge in this petition under Art. 227 of the Constitution of India. By his impugned order, respondent No.1 rejected the petitioner's application for grant of a small

strip of land adjacent to his small-scale industry.

2. The facts giving rise to this petition move in a narrow compass. The petitioner runs his small-scale industry in one parcel of land in the village site admeasuring about 1200 acres equivalent to about 1002 square meters. A small parcel of land admeasuring about 127 square yards equivalent to about 106 square meters is adjacent to the land housing the petitioner's small-scale industry ('the disputed land' for convenience). The petitioner applied for grant of the disputed land for industrial purposes. By his order passed on 3rd November 1990, respondent No.1 rejected his application. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in revision before respondent No. 2. A copy of the memo of revision is at Annexure B to this petition. It came to be registered as Revision Application No. 30 of 1991. By his order passed on 10th January 1991 in the revisional application, respondent No.2 rejected it. Its copy is at Annexure C to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in revision by the order at Annexure C to this petition.

3. As rightly submitted by Shri Shah for respondent No.2, this court will not interfere with any finding of fact under Art. 227 of the Constitution of India in view of the binding ruling of the Supreme Court in the case of Mohd. Yunus v. Mohd. Mustaqim and others reported in AIR 1984 SC 38. It must be said in fairness to Shri Trivedi for the petitioner that he has not challenged any finding of fact.

4. It is true that the disputed land is situated within the village site. It is also not in dispute that it is adjacent to the land housing the petitioner's small-scale industry. It is also not in dispute that it is a small strip of land admeasuring about the 1/10th of the land housing the petitioner's small-scale industry. It transpires from the revisional order at Annexure C to this petition that it is of no use either to the concerned panchayat or to anyone. It also transpires therefrom that it is not even in the roadline. It appears that no one has any objection to the grant of this land in favour of the petitioner.

5. It is the case of the petitioner that on the Northern side a parcel of land houses one industry in the name and style of Patel Industry. It is just facing the petitioner's small-scale industry on the other side of the road. If the petitioner's small-scale industry is already in the village site and if a useless strip of land adjacent to the petitioner's small-scale industry is applied for by the petitioner for

industrial purposes, simply because it is situated in the village site should not come in the way of its grant to the petitioner with imposition of certain conditions as to its use provided there are no other impediments against such grant. This aspect of the matter is considered neither by respondent No.1 nor by respondent No.2. In that view of the matter, the impugned order at Annexure A to this petition as affirmed in revision by the order at Annexure C to this petition can be said to be suffering from the vice of non-application of mind on the part of its respective authors.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition as affirmed in revision by the revisional order at Annexure C to this petition has to be quashed and set aside. The matter is required to be remanded to respondent No.1 for his fresh decision according to law in the light of this judgment of mine.

7. In the result, this petition is accepted to the aforesaid extent. The impugned order passed by the District Development Officer on 3rd November 1990 at Annexure A to this petition as affirmed in revision by the order passed by the Principal Secretary (Appeals), Revenue Department, at Ahmedabad on 10th January 1992 at Annexure C to this petition is quashed and set aside. The matter is remanded to respondent No.1 for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
